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Relations between the Security Council of the United Nations and the Peace and Security Council of the African Union: steps towards maintaining international peace and security

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Abstract: This paper, through a multitude of Resolutions of the United Nations system and beyond, has tried to investigate the obvious or non-evident relationships on all aspects: strategic, political, economic of the role played by the Peace and Security Council of the African Union with the Security Council of the UN. What is the regulatory framework? What missions have we seen so far on the African continent and who organized them? The difficulties, the criticisms, the problems, the solutions, the effectiveness, the objectives obtained, the maintenance of peace and security in the area are some of the questions that we try to answer. Conclusions don't exist since everything is ongoing. The same practice leaves every researcher in the sector to arrive at questionable conclusions that the same operations placing at first level the principles of the UN system.

Keywords: peacekeeping operations; peacebuilding; Security Council of the UN; Art. 53 of the UN Charter; Peace and Security Council of the African Union; international law; peacekeeping; international security; peace operations; African continent; UN law.

Introduction

The Chapter VIII of the UN Charter refers to the relationships between the UN and the regional organizations regarding the maintenance of international peace and security (Boisson De Chazournes, 2010; Pellet, 2014). The objectives of the UN are based on the founding documents of other organizations, also recognizing the regulatory parameter in the relevant sector (Peyrò Llopis, 2012)¹.

In particular, Art. 52 of the UN Charter takes into consideration the local dispute and makes an effort to reach a peaceful solution through regional agreements or organizations before referring anything to the Security Council (Pellet, 2014)². Thus art. 52, to

¹“(…) the acts of the international organizations are already bound by their own law to recognize the prevalence of the Charter (…)”.

²“1. Nothing in this Statute precludes the existence of regional agreements or organizations for dealing with those matters relating to the maintenance of international peace and security which lend themselves to regional action, provided that such agreements or organizations and their activities comply with the purposes and principles of the United Nations. 2. Members of the United Nations participating

these agreements of an organizational nature and not only, puts the resolution of disputes first, achieving the purposes of the Charter itself (Boisson de Chazournes, 2010; Pellet, 2014). This type of role with a customary character and free choice of the relative means for the resolution of disputes does not provide for the relative obligation on the part of the states to use regional organizations and regional agreements, thus delimiting the competences between universal and regional organizations in the sector of solutions of disputes in a peaceful manner.

The UN regulations for peace operations. The African case

Many times, however, states do not proceed in the same way with regards to the resolution of disputes and the protection of human rights (Kamto, 2007)³. Therefore we take into consideration the African regional and sub-regional

in such agreements or organizations shall make every effort to bring about a peaceful settlement of local disputes through such agreements or regional organizations before referring them to the Security Council. 3. The Security Council encourages the development of peaceful settlement of local disputes through regional agreements or organizations, either on the initiative of the states concerned or by referral from the Security Council. 4. This article in no way prejudices the application of articles 34 and 35 (...)"

3See; Cadre commun Organisation des Nations Unies-Union africaine pour un partenariat renforcé en matière de paix et de sécurité of April 2017: "(...) ou premier chef (...) Cadre Union africaine-Organisation des Nations Unies pour la mise en oeuvre de l'Agenda 2063 et du Programme de développement durable à l'horizon 2030 (...)"

https://unoau.unmissions.org/sites/default/files/02_un-au_joint-framework_a5-booklet_fr.pdf

organizations and those following military operations that are replaced or in any way modified, absorbed, etc. by those of the UN. The activities of the African Union and the ECOWAS, given that we are interested in the African continent, have organized in Mali the Mission des Nations Unies au Mali-MINUSMA⁴ which with the Resolution 2100 of 25 April 2013 was transferred to the Mission to support Mali entitled: African - led International Support Mission in Mali-AFISMA (Gray, 2018)⁵. For the consolidation of peace we also remember the Mission for the Consolidation of Peace in Central African Republic-MICOPAX; RCA)⁶, which was transfused into the Mission and created by the African Union as a support of the Republic itself entitled: “Mission internationale de soutien à la Centrafrique sous conduite africaine-MISCA” after the authorization by the Security Council with the relevant Resolution n. 2127 of 5 December 2013)⁷; and with its authority which has been transferred to the Mission of a multidimensional nature with an integrative way to the stabilization of the UN

4A/RES/75/302 C-5; A/75/PV.88 of 30 June 2021: Financing of the United Nations Multidimensional Integrated Stabilization Mission in Mali.

5The indications of the Security Council in Resolution 2164, of 25 June 2014; the reports of the Secretary-General in UN Doc. S/2013/338, para. 5; UN Doc. S/2013/59, para. 12ss; UN Doc. S/2014/142 (on the transformation of MISCA into a UN peacekeeping operation).

6A/RES/76/282 C.5; A/76/PV.89 of 29 June 2022: Financing of the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic.

7S/RES/2127 of 5 December 2013.

“Mission intégrée multidimensionnelle de stabilisation des Nations Unies en Centrafrique-MINUSCA” according to the Resolution 2149 of 10 April 2014⁸. The Resolution 2217 of 28 April 2015, par. 3 refers to the activities of the ECOWAS in relation to the Mission of the UN in Côte d'Ivoire organized by the United Nations Operation in Côte D'Ivoire-UNOCI according to the 2nd recital of the Resolution 2166, of 25 June 2014 (Aall, Crocker, 2016; De Wet, 2019)⁹.

Art. 52 also includes and refers to Articles 34 and 35 (para. 4) of the Charter (Gray, 2018). In particular, it affirms that:

8S/RES/2149 of 10 April 2014.

9“Strategic cooperation pre-and post-transition, and the transfer of authority between the operation of AU and UN”; UN Doc. S/2015/3. UN Doc. S/2016/89), Office of the Special Envoy for the Sahel (OSES). UN Doc. S/2013/354. PSC/PR/COMM. (DCXLIV), which is affirmed that: “12. Stresses the determination of the AU to take all necessary measures, in line with the relevant AU Instruments, with a view to ensuring full respect and compliance with the will and desire expressed by the people of the Gambia on 1 December 2016”). For the ECOWAS see the: Final Communication of order session of 17 December 2016, that affirms: “(...) a) support the result of the elections of 1 December 2016 (...); b) ensure the safety and security of the president-elect, Adama Barrow (...); g) request the AU and UN ownership of all decisions relating to The Gambia and their support for ECOWAS mediation efforts, including the provision of technical assistance where necessary; h) take all necessary measures to strictly enforce the results of the elections of December 1, 2016. Presidential Declaration of 21 December 2016, in UN Doc. S/PRST/2016/19: “(...) the Security Council reiterated its request to outgoing President Jammeh and the relevant authorities of The Gambia to fully respect the results of the presidential elections (...), to respect the will of the Gambian people and to carry out a peaceful and orderly transition process and the transfer of power to President-elect Adama Barrow (...)”. On 19 January 2017, ECOWAS: “(...) deployed a military contingent (largely composed of Senegalese troops) to The Gambia in support of the President-elect. In Resolution 2337 (of 19 January 2017 (...)) the Security Council, without reference to Chapter VII or VIII of the Charter, adopted “the decisions of ECOWAS and the AU to recognize Adama Barrow as President of The Gambia”; and expressed “its full support for ECOWAS in its commitment to ensure, first and foremost, by political means, respect for the will of the Gambian people expressed in the results of the December 1 elections (...)”.

“(...) the Security Council may investigate any dispute or any situation which may lead to international friction or give rise to a dispute, with a view to determining whether the continuation of the dispute or situation is likely to endanger the maintenance of international peace and security” (art. 34)

and;

“(...) dispute or situation of the nature indicated in article 34 for the attention of the Security Council or the General Assembly” (art. 35, par. 1) (Pellet, 2014).

The application of art. 34 can also be functional to the operation of Art. 53 of the UN Charter (Pellet, 2014)¹⁰. Thus, to the Security Council is given:

“(...) the power to use (the agreements or) regional organizations to carry out coercive actions under its direction, as well as to authorize such actions when the initiative for their adoption comes (from agreements or) by organizations. With the clarification that “no coercive action” (enforcement action) may be undertaken on the basis of regional agreements or by regional organizations without the authorization of the Security Council” (para. 1) (...) (Pellet, 2014).

Within this context, we remember Art. 103 of the UN Charter which reports:

“(...) in case of conflict (...) the obligations contracted by the Members of the United Nations (...) Charter and the obligations assumed by them under any other international agreement, the obligations deriving from this Statute” (Pellet, 2014).

10“1. The Security Council uses, as appropriate, regional agreements or organizations for coercive actions under its direction. However, no coercive action shall be taken under regional arrangements or by regional organizations without the authorization of the Security Council, except for measures against an enemy state, as defined in paragraph 2 of this article, as provided for in Article 107, or by regional agreements directed against a renewal of aggressive policy by such a state, until such time as the Organization can, at the request of the government concerned, be entrusted with the task of preventing further aggression by part of that state. 2. The expression “enemy state” as used in paragraph 1 of this article refers to any state which during the Second World War was an enemy of one of the signatories of the present Statute”. Therefore, the role recognized, in the text, in art. 103, cit. it remains even when observed (...).”

This is a special mode of effectiveness of the Charter which makes available in a suitable and directed manner the behavior of the Member States and other organizations in a compliant manner according to the principles of art. 103 nullifying thus the application of the latter's rules which are or may also have conflicting effects with the related obligations deriving from the Charter and coordinated with them.

Security Council through art. 53 “authorize the regional organisations”. It is noted that, in the first hypothesis (initiative of the Council) there is a direct connection of the same body with the coercive action, given that the purposes and means of this are indicated by the Council (on the initiative of the regional entity). It is added, an attention to the effect of the Council's act allowing future coercive activity, thus legitimizing it; that is, an activity which, in the absence of authorisation, would conflict with the system of the UN Charter. The well-known prohibitions set by Art. 2, par. 4. The exclusivity of the Security Council's power to initiate coercive actions in one of the situations ascertained by it is pursuant to Art. 39 (Pellet, 2014).

Art. 52, par. 1 seems to be a hypothetical initiative of the Security Council (SC) but the attention is concentrated on the relevant aspect which is indicated on the capabilities and skills of the regional entity in the matter and the skills as easy to see, thus outlining a limit for a possible recourse by the SC itself to

this type of entity. The International Court of Justice has already expressed its opinion on the subject, reporting that:

“(...) organisations internationales sont des sujets de droit international qui ne jouissent pas, à l’instar des Etats, de compétences générales. Les organisations internationales sont (...) dotées par les Etats qui les créent de compétences d’attribution dont les limites sont fonction des intérêts communs que ceux-ci leur donnent pour mission de promouvoir (...)” (Liakopoulos, 2020a; Liakopoulos, 2020b; Liakopoulos, 2020c)¹¹.

When we talk about the authorization of a regional organization, the attention shifts to relationships of postponement and presupposition of a reciprocal nature which are established between the documents of the organization and the Resolution that the SC grants the relevant authorization needed for its activation. The scope of this authorization is taken into consideration with the relevant acts of the regional organizations which are referred to in the Resolutions of the SC even after implicit reference¹².

The related authorizations are based on decisions of the regional organizations and on the basis of the founding documents as well as the systems created. It is believed that the SC authorizes related activities and highlights the relationships that are created between the SC and regional organizations according to the actions they have to carry out (Boisson De Chazournes, 2010).

¹¹ICJ, Legality of the threat or use of nuclear weapons, advisory opinion of 8 July 1996, ICJ Reports 1996, p. 239, par. 25.

¹²Par. 18 of the Resolution n. 2378 of 20 September 2017 affirms that: “(...) led peace support operations authorized by the Security Council and under the Security Council’s authority under Chapter VIII”, “acknowledging (...) the development of operations mandated or authorized by the AU (...)”.

In practice there are developments that comply with the letter of the law, i.e. Art. 53 of the UN Charter (Peyrò Loppis, 2012; Pellet, 2014). Even when it is necessary to make requests that come from the same organizations as seen in the context of the European Union with political objectives and on the scene of international relations, respect for the SC is outlined and combined according to what the Articles 53 and 54 of the UN Charter pre-establish (Boisson de Chazournes, 2010; Pellet, 2014). This type of authorization also attracts attention with the coercive nature of the relevant operations and on the context of the same which are inserted, thus favoring the relative attraction in Chapter VII of the relevant situations which are also foreseen by Chapter VIII allowing the identity of the powers of the SC according to Chapter VII and art. 53 which recalls the relative *ratione materiae* of the first (Pellet, 2014).

What type of control of the SC exists in relation to regional organizations?

It is true that with the establishment of the mission based on the authorization given by the Resolution of the SC. The first control is based on the legal foundation of Chapter VII. Chapter VIII is already manifested as a central point of the relationship between the SC and the entity carrying out the control. The

relative powers attributed to the SC imply its control over the actions of regional organizations that are used or authorized by the same body (Boisson De Chazournes, Pergantis, 2012; Boisson De Chazournes, 2017). If such authorization is missing, the control components are based on Chapter VIII in the general collective security system of the Charter.

In practice, the Resolution 2033 of the 12 January 2012, the SC states:

“(...) its primary responsibility for the maintenance of international peace and security (...) cooperation with regional and sub-regional organizations in matter of maintaining peace and security, is consistent with Chapter VIII, and can improve collective security” (recital: 2nd and 3rd); furthermore, in the “Statement” of the President of the Council, dated 10 December 2012, the Council itself reiterated that responsibility “is an important pillar of collective security (...)”.

On 6 August 2013, the Prime Minister, on his behalf, declared, that this cooperation, as appropriate for regional action, is an integral part of collective security as provided for in the Charter of the United Nations and can improve collective security. The activities that are an expression of that cooperation are integrated into the Charter system. Of course, there is a “need” to keep the Council “always” and “fully informed” of the activities in question¹³

“(...) cooperation and (...) coordination in matters of maintaining peace and security between the two organizations, which is mentioned, precisely, in the aforementioned “Cadre commun Organization des Nations Unies-Union africaine pour un partenariat renforcé en matière de paix et de sécurité”¹⁴.

¹³UN Doc. S/PRST/2013/12.

¹⁴S/RES/2033 of 12 January 2012.

What can be understood from the previous paragraph is that an operation presupposes clear objectives, i.e. those that must be suitable for defining the relative scope of the operation. These are objectives understood by the relevant acts that accompany the operations taking into account the referral relationships established by the peace agreements, the acts of regional organizations and Resolutions of the SC. This type of objectives are precise, clear for each operation and according to the Resolution of the SC n. 2056 of 5 July 2012 relating to peace and security in Africa. It was stated that:

“(...) ECOWAS and AU request for a UN Security Council mandate authorizing the deployment of an ECOWAS stabilization force to support the political process in Mali, help support the territorial integrity of Mali and fight terrorism” (para. 17), expressed its “readiness to further examine the ECOWAS request once further information on the objectives has been received, the means and methods of the planned deployment and other possible measures (...)” (para. 18)¹⁵.

Continuing in the same spirit with the Resolution n. 2085, of 20 December 2012 which took note of the ECOWAS and AU press releases stating that:

“(...) the Joint Strategic Concept of Operations for the International Military Force and the Malian Defense and Security forces” (9th recital) acts pursuant to Chapter VII of the Charter”. The Council decided to authorize an “African-led International Support Mission” in Mali (AFISMA), with the power to take all necessary measures for the implementation of the indicated tasks (par. 9) (...)”¹⁶.

¹⁵S/RES/2056 of 5 July 2012.

¹⁶See also: Sixteenth (16th) Annual Joint Consultative Meeting between Members of the United Nations Security Council and the African Union Peace and Security Council, New York, 14th October 2022:

<http://www.peaceau.org/en/article/sixteenth-16th-annual-joint-consultative-meeting-between-members-of-the-united-nations-security-council-and-the-african-union->

Thus the SC has limited the relative temporal effectiveness that has to do with the authorization for an initial period lasting one year.

The Resolution 2121 of 10 October 2013 and of 14 October 2011 and 2127 in the Mission for the Consolidation of Peace in Central African Republic-MICOPAX and MISCA

According to the recital n. 18 of the Resolution 2121 of 10 October 2013 the SC in a spirit of joy for the decision of the Peace and Security Council of the African Union authorized: “(...) Mission internationale de soutien à la Centrafrique sous conduite africaine (MISCA) (...) Mission de consolidation de la paix en Centrafrique (MICOPAX) et la MISCA (...)”¹⁷.

Thus it gave its support to a political transition process which was based on acts that indicated immediate application, envisaging a managerial role that respects future developments where the SC stated that:

“(...) count on the “mise en place” of the Mission functional to the formation of a stable and democratic Republic which exercises its authority over the entire national territory and assumes the responsibility of protecting the civilian population (...) engaged the African States and requested the Secretary General and the BINUCA to cooperate for the implementation of the transition from MICOPAX to MISCA(...)”¹⁸.

With the second Resolution based on ex Chapter VII the SC according to the 29th recital authorized the deployment of the MISCA operation for 12 months referring that:

[peace-and-security-council-new-york-14th-october-2022](#)

17S/RES/2121 of 10 October 2013.

18S/RES/2121 of 10 October 2013, par. 19ss.

“(...) the transitional authorities requested that MISCA be assisted by French troops (29th recital), the Security Council authorized the latter, within the established terms, to “appuyer” MISCA in the execution of its mandate (...)”¹⁹.

The operations in Mali were now operational and the authorization was based on the adoption of the operational concept by the African Council, i.e. the definition of an overall framework of an operational panorama with all the characteristics of the mission which must be planned according to the representatives of the UN. The SC relied on the commitments made by the EU and in support of future operational activity according to the 24 recital of the Resolution²⁰. The same council issued the authorization for the mission under African military leadership and according to the time limits thus inviting:

“(...) to report to the same Council every 60 days, in close coordination with the Secretary General and other international organizations and bilateral partners involved in the crisis, regarding the deployment and activities of MISCA (...)”²¹.

In the same spirit the deployment of the mission also had even stronger legal support in the environment of the Political and Security Committee according to Art. 38 TEU, where the Foreign Affairs Council of the EU has committed to providing the relevant aid in the African initiatives in the mission, thus strengthening:

¹⁹UN Doc. S/PV.7092, p. 8: “Déclaration de la 3ème réunion du Groupe International de Contact sur la République Centrafricaine (...)”.

²⁰See the Resolution n. 2248 of 12 November 2015, (recital 19).

²¹S/RES/2248 of 12 November 2015, par. 32.

“(…) the European engagement in the cadre of their global approach”. In this perspective, “marqué son accord politique sur (...) une opération militaire CSDP (...)” (Blanke, Mangiamelli, 2021).

Equally important, on 20 January 2014, the same Council stated that:

“(…) to approve the concept of management of the crisis at this time (...) it outlined the latter as a force aimed at giving “temporary support”, not exceeding six months, in order to provide “a safe environment, in the Bangui region”, before the transfer to the activities of the African Union (...). It was careful to specify that the operation should be based on a Resolution of UN Security Council allowing the establishment “dans les meilleurs délais” of a EUFOR operation in the Central African Republic, “in support” of the efforts made by the international community, in particular by the AU, the UN, France and the Central African authorities (...)”²².

With the Resolution 2134 of 8 January 2014 the SC within the spirit of the Chapter VII of the UN Charter authorized the deployment of the “selon les termes” operation as specified by the EU. The Council recalled:

“(…) the functions and characteristics mentioned above of the authorized force and established a relationship of mutual referral and presupposition between the content of its resolution and the decisions of the EU. In particular, the Council authorized the operation to take all the necessary measures, within the limit of its capacities and within its zones of deployment, from the initial deployment and pending a period of six months to calculate the date at that time declared “être pleinement opérationnelle” (...) asked the Union for reports “on the execution of the mandate (...) to coordinate its relations with those of the AU”, and invited the transitional authorities to conclude an agreement with the EU on the status of force (...)”²³.

In this spirit the Council has sought to limit the relative duration

²²Décision 2014/73/PESC du Conseil du 10 février 2014 relative à une opération militaire de l'Union européenne en République centrafricaine (EUFOR RCA), OJ L 40, 11.2.2014, p. 59-62. See also: [EU Statement – United Nation Security Council: the Central African Republic | EEAS Website \(europa.eu\)](#)

²³S/RES/2137 of 13 February 2014, par. 14.

of the operation and has requested more information concerning the operational activities that are authorised. In practice, the duration of the operation constituted an important component that contributed to the control of the Council²⁴, stating that:

“(...) the time limits of the action, the Council reserves the power to decide on its renewal and, therefore, as it is easy to imagine, the possibility of verifying whether, in the management of the operation, the initially indicated objectives have been respected or not (...). It is particularly important where the mandate was originally outlined by a regional organization with broad capacity of operational autonomy (...) the temporal component of the operation allows the Council to periodically decide the follow-up to give to the activity in question, thus being able to counterbalance the possible autonomy of the regional organization (...). The duration of the operation is defined with certainty from its inception. Mostly, the Council initially indicates the duration of the mandate without excluding its renewal; as actually happens (...)”²⁵.

According to art. 54 the information of the Council's subsequent control over operational developments includes initiatives that are appropriate for regulatory activities that fall within the competence of the Council itself. The same Art. 54 of the UN Charter sets the relevant formal requirements for the information methods of the SC. The information is also provided orally

²⁴See the Resolution 1778 of 25 September 2007. See also: Articles 1 and 15 of Joint Action 2007/677/CFSP of the Council of 15 October 2007 on the European Union Force (EUFOR) Chad/RCA, initiated by Decision 2008/101/CFSP of the Council of 28 January 2008. See also: AU PSC/EU PSC.AJCM.12, Joint Communiqué on the 12th virtual annual joint consultative meeting of the African Union Peace and Security Council and the European Union Political and Security Committee of 26 June 2020.

²⁵See the Resolution 1464 of 4 February 2003, par. 9: “(...) authorizes Member States participating in the ECOWAS forces (...) for a period of six months after which the Council will assess the situation on the basis of the reports referred to in paragraph 10 below and decide whether to renew this authorization (...)”). the Resolution n. 1088 of 12 December 1996, par. 18 for the Stabilisation Force-SFOR. The Resolution.1575 of 22 November 2004, par. 10 for the mission EUFOR in Bosnia. The Resolution 2470 of 21 May 2019 and the Resolution 2120 of 10 October 2013.

during the meetings of the SC and through the state delegates who participate in them. The relevant information transmitted by the regional organization of the SC is descriptive in the situation considered (Gueyou, 2005; Sicilianos, 2008). The exercise of responsibilities the SC requests information prior to the deployment of the mission and/or on indicated operational profiles.

The cited Resolutions do not have an exclusive object where the authorization of an operation has a broader and more overall scope which includes the activity of a regional organization considering that the relationships between the SC and the regional organizations can vary according to the autonomy capabilities operational thereof. The nature of the political body of the SC is legitimate to assume that it exercises directive-regulatory control over operations. Operational-military control is not essential which shows the experience of failing to comply with the operations created by the SC itself, underlining that: “(...) the primacy of politics should be the hallmark of the approach of the United Nations to the Resolution of conflict, including through mediation, the monitoring of ceasefires and, assistance to the implementation of peace accords (...)” (Gray, 2018).

It is clear that it is a control mechanism with a directive/regulatory role necessary to resolve every overall situation relating to a regional organization and oriented by the SC itself. We think of the Resolution 2196 of 22 January 2015 related to the control and management of a situation that characterizes the presence of missions of different nature as we have seen in the MISCA missions of the EUFOR and the EUFOR (EU's Military Advisory Nission-EUMAM RCA; 6th

and 7th recitals) including the presence of the Armée de Résistance du Seigneur-LRA (15th recital). It is established, organized and controlled according to Chapter VII of the Council by adopting measures that do not imply the use of force and oriented in a direction favorable to the operation of the missions present in the RCA (par. 19) (Aall, Crocker, 2016)²⁶. Obviously the SC has the power to renew the action in progress or not, as well as it is always able to exercise overall and final control over the action linked to the initial impulse of the regional organization in an authorized manner (Sarooshi, 1999). This creates a guarantee for the relevant type of control exercised²⁷.

(Follows): Operation and methods of organizing operations

The military movement of forces is indicative of the relative collaborative relationships between the organizations that are involved and indifferent to an operational theater on the part of the SC. The secretary general in the relevant “Supplement to the Agenda for Peace”²⁸ based on a collaboration between regional peacekeeping organizations with diplomatic support, operational towards a joint operation. The peacekeeping operations of the

²⁶UN Doc. S/2015/3, p. 3.

²⁷Resolution 2301 S/RES/2301, of 23 July 2013, parr. 40 and 56.

²⁸UN Doc. A/50/60-S/1995/1, par. 86.

UN follow the regional organizations in the different models in the experience of the universal organization²⁹. The operations of regional organizations and especially the peacebuilding missions follow the operations of the UN including also the OECD and the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium - UNTAES) (Derblom, 2011).

These missions allow one's own experiences at the moment of absorption into the next missions as we have seen in: AMIB in ONUB and MISCA in MINUSCA³⁰. In the same framework, regional organizations carry out different operations as we have seen in the case of the African Union in Mali and in the mission of the Union in Mali and the Sahel-MISAHEL which is also incorporated into the MINUSMA mission which replaced the previous AFISMA³¹. Subsequent operations that operate in this way presuppose the capacity for partnership and coordination between organizations. We must say that this “attitude” does not affect the general operational panorama. The future role of this type of operation is part of the decisions of the SC that we saw in Resolution 2167 of 28 July 2014 (par. 13)³² (Gray, 2018).

29“(…) instead of waiting for a peace to keep, the AU views peacekeeping as an opportunity to establish peace before keeping it (...)”, PSC/PR/2 (CCCVII), par. 71.

30Resolution 1545 of 21 May 2004, par. 3.

31UN Doc. S/2015/229, p. 2.

32S/RES/2167 of 28 July 2014.

The transitional passage from one operation to another is part of a phase that respects co-deployment as we have seen in the case of Chad and in the Central African Republic (CAR), where EUFOR:

“(...) has been alongside the Mission des Nations Unies en République centrafricaine et au Tchad-MINURCAT, a Mission which later replaced the first (...) co-deployment favors the autonomy of the organizations involved in the financial and organizational control of their operation; the creation of a force of a regional organization in co-deployment with another UN operation (Kosovo Force-KFOR, in co-deployment with the United Nations Mission in Kosovo-UNMIK) gives the first political-moral as well as legal legitimacy, being of a force that shares the values that are presumed to underlie the UN force (...) co-deployment is likely to facilitate UN control over the operational performance of the activities of the forces of the regional organization (so between the Observation Mission des Nations Unies en Géorgie-MONUG and the peacekeeping operations of the Community of Independent States-CIS), despite the autonomy retained by the operations (...)” (Aboagye, 2007; Gray, 2018).

In this case we can talk about hybrid or joint operations such as for example the African Union/United Nations Hybrid Operation in Darfur-UNAMID³³, as operations with a limiting nature and difficult evaluation paths that exercise their work in favor or against the joint activity. The transmission of organizational and operational experiences by the UN to a regional organization with less experience as happens in the case of the Africa Unite is a very hybrid mission which lays the relevant prerequisites for immediate and constant material

³³Resolution 1769 of 31 July 2007, par. 1, based on the Joint Report (Chairperson of the Commission of the African Union) in PSC/PR/2 (LXXIX), par. 54. See also the Report of the Chairperson of the Commission on the African Union-United Nations partnership: the need for greater coherence, PSC/AHG/3. (CCCXC VII), par. 10.

control in the operational panoramic theater (Sicilianos, 2008; Boisson De Chazournes, 2010; Walter, 2011; Boisson De Chazournes, Pergantis, 2012; Higgins, Webb, Akande, Sivakumaran, Sloan, 2018; Alland, 2021; Aledo, 2021; Rainey, Wocks, Ovey, 2021)³⁴.

Act and protocol establishing African Unity. The relationship with the Peace and Security Council

Already with Resolution 2378, the SC stated that:

“(...) further reaffirms its commitment to the cooperation between the United Nations and regional and subregional organizations and arrangements in matters relating to the maintenance of international peace and security, and consistent with Chapter VIII of the Charter of the United Nations, which can improve collective security (...)” (14^o recital)³⁵.

The founding treaties of some regional organizations define the competences in the sector under investigation. Among those treaties, a framework of initiative and autonomy of an operational nature is that of the same sector³⁶. As can be seen in

³⁴UN. Doc. S/2012/548; UN Doc. S/2011/805, par. 30ss. See also: ECtHR, *Behrami and Behrami v. France, Saramati v. France, Germany and Norway* of 2 May 2007. And in the same spirit see also by the same Court: *Milisavljević v. Serbia* of 4 April 2017. *Al Nashiri v. Romania* of 31 May 2018.

³⁵S/RES/2378 of 20 September 2017.

³⁶See the Charter of the Organization of American States of 1948 that affirms in Chapter VI: “(...) of the territory or the sovereignty or political independence of any American State (...) affected by an armed attack or by an act of aggression that is not an armed attack, or by an extra continental conflict, or by a conflict between two or more American States, or by any other fact or situation that might endanger the peace of America, the American States, in furtherance of the principles of continental solidarity or collective self-defense, shall apply the measures and procedures established in the special treaties on the subject (...)”.

the founding act of the African Union of 11 July 2000, which in art. 4 stated that:

“(…) in a common defense policy, (…) the right of the Union to intervene in a Member State is pursuant to a decision of the Assembly in respect of serious circumstances, namely: war crimes, genocide and crimes against humanity; (j) the right of Member States to request intervention from the Union in order to restore peace and security” (Magliveras, Naldi, 2018).

We also saw the same statements in the 2002 protocol establishing the Peace and Security Council of the Union which, as we read in art. 6 the Council attributes:

“(…) peacemaking functions; of peacebuilding (…) the competence to create peace-support operations, to work to prevent conflicts and policies likely to lead to genocide or crimes, to recommend to the Assembly - which decides - intervention in the serious circumstances indicated by art. 4 (...) as well as to implement its decisions, including intervention in a Member State. This discipline assigns to the Council the competence to create peacekeeping operations, kept clearly distinct in art. 7 from the intervention in the name of the Union (...)” (Baimu, Sturman, 2003; Allain, 2004; Yusuf, 2012; Kumali, Viljoen, 2013; Lyi, 2016)³⁷.

Important provisions in the system of the African Union are foreseen in the creation of an African Stand-by Force (Okeke, 2014)³⁸ as it is denoted that:

³⁷The 2003 Protocol on the amendments to the Founding Act of the AU amends art. 4 affirms that: “(…) the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of serious circumstances, namely: war crimes, genocide and crimes against humanity as well as a serious threat to legitimate order to restore peace and stability to the Member State of the Union upon the recommendation of the Peace and Security Council; (q) restraint by any Member State from entering into any treaty or alliance that is incompatible with the principles and objectives of the Union; (r) prohibition of any Member State from allowing the use of its territory as a base for subversion against another Member State (...)”.

³⁸UN Doc. S/PRST/2014/27, the Council affirms that: “(…) welcomes the steps taken for the operationalization of the African Capacity for Immediate Response to Crises (ACIRC), including through enhanced decision-making to facilitate rapid deployment (...)”. See, African Union Independent Panel of Experts: Assessment of the African Standby Force and Plan of Action for Achieving Full Operational Capability by 2015, www.panapress.com. UN Doc. S/2018/678 of 6 July 2018,

“(...) a move away from the absolute principle of the prohibition of interference in the internal affairs of states members provided for by the founding act of the Organization of African Unity (para. 18); ban deemed to be the cause of the inadequacy of the said Organization to deal with conflictual contexts and manage crisis situations characterized by serious and massive violations of human rights (...)” (Baimu, Sturman, 2003; Yusuf, 2012; Dyani-Mhango, 2012; Ndulo, 2012; Tchikaya, 2013).

These are provisions that are not only indicative but in their own set of aspiration of Member States of organizations provide solutions related to peace and security problems in the African context (Kioko, 2003; Rechner, 2006; Hollywood, 2007; Wyse, 2018).

Autonomy of the application of the rules and respect for the powers of the SC

The relationship between the Council of the African Union and the Council of the UN allows the Charter of the UN to recognize its primary responsibility for maintaining international peace and security. Here we are talking about a problem called “dismissed out of hand” that was examined during the preparatory work of the Treaty establishing African Union (Paliwal, 2010; Corten, 2012; Boisson De Chazournes, 2017). The relevant rules under consideration of this type of relationship are various and pursuant to Chapter VII of the UN Charter. A first orientation prefers an interpretation that places

par. 45.

universal organization in an exercise of the powers that it recognizes in the African Council. Another second orientation aims to emphasize the relative autonomy created by rules that respect the system of the collective security according to the UN Charter. We can say that these provisions affirm a certain primacy of African regional organizations in the matter of maintaining peace and security at an international level where coordination between the SC is necessary and which recognizes their hegemonic and independent role (Levitt, 2005). We can clearly speak of a customary whole in the context of the UN Charter which allows an autonomous intervention of this type of organizations and which acts where the SC adds and authorizes *ex post* the operations of the organizations (Yusuf, 2012). According to such an interpretation, the rules are a manifestation of an exercise of responsibility but also of protection which certainly helps the SC's leading role on the world scene.

Within this context, Articles 4 and 6, as well as Art. 17, par. 2 of the African Council protocol are recalled stating:

“(...) where necessary, recourse will be made to the United Nations to provide the necessary financial, logistical and military support for the African Unions' activities in the promotion and maintenance of peace, security and stability in Africa, in keeping with the provisions of Chapter VIII of the UN Charter on the role of Regional Organizations in the maintenance of international peace and security (...). The Peace and Security Council shall cooperate and work closely with the United Nations Security Council, which has the primary responsibility for the maintenance of international peace and security (par. 1) (...). The regional organization would reserve for itself the right to intervene in Africa and the power to request the involvement of the

universal organization, precisely, “when necessary” (...)” (Magliveras, Naldi, 2018).

According to our opinion it is a customary norm of humanitarian intervention which is carefully codified in the treaty of the African Union and in the protocol of the Council thus finding relative confirmation in the circumstance of the SC which authorized ex post the interventions of African organizations. A derogation of art. 103 in favor of the rules of the treaty and the relevant protocol as required by the same article which does not operate with respect to customary rules. In a different way it is observed that the authorizations of the SC ex post facto are conflicting with Art. 103 of the UN Charter (Levitt, 2005; Kolb, 2014; Pellet, 2014).

Configuration of Art. 51 of the UN Charter provides for an exception established by Articles 2, par. 4 and 39 of the UN Charter (Pellet, 2014) i.e. on the emergency situation of the use of self-defense as an exception to the prohibition on the use of force which is provided for by the first provision and as outlined in Art. 4, letter. h) provision that allows a limited form of humanitarian intervention in serious situations after gross violations of human rights and as they have been pre-established and analyzed by the SC itself (Walter, 2011; Kumali, Viljoen, 2013)³⁹. According to art. 4 we can talk about a source of law

³⁹“(...) may be read asserting a right to autonomous regional intervention in case of SC inaction (...) when the SC is unable or unwilling to exercise its responsibility to protect”. UN Doc S/2017/454, par. 65). According to the Resolution n. 2378: “(...

for interventions within the states that are parties to the act establishing the African Union and in the situations specified by ratifying this act, i.e. the Member States that have given the relevant consent in advance once and for all to the actions of the African Council. The use of force is compatible with the norms of *jus cogens* and the relative contrast with the UN Charter is observed, thus constituting the norms between the prohibiting or not use of force (Harrell, 2008).

Acceptance or denial of the relational approach

From what we have noted and understood so far, it is clear that the relevant authorizations of the SC that have to do with the functioning of an operation implicitly recognize the original primacy of a collective security system of the kind owned by that type of Council. It is believed that these are real authorizations which are assumed as a remedy for illegitimate activities which recover a system of the UN which was previously foreign and incompatible with it. In a customary law this approach appears to be reconstructed on a practice that cumulatively takes into consideration operations that cannot be

the primacy of politics should be the hallmark of the approach of the United Nations to the Resolution of conflict (...)” (par. 1)

brought back to a unitary nature where the diversity of their characteristics and objectives are the same operations examined (Levitt, 2006; Sicilianos, 2008; Boisson De Chazournes, 2017). The relevant experiences are cumulatively considered and the operations are managed directly by some states preceding a certain recognition of the customary norm evoked. The formation of a customary rule makes the card system and the related actions considered as provided for by Art. 103 legitimate, i.e. of the act which takes on the value of a customary norm and of a character assumed by obligations called by that norm which establishes art. 2, par. 4. following. We propose the relative contrast with the interventions that build a rule superior to the customary one and allowing that there is a foundation for the interventions themselves. The Charter does not provide for humanitarian intervention by Member States but a binding ban on it.

A similar considerable order takes place in the opinion that constructs the discipline with the manifestation or recognition of the existence of a norm on the responsibility to protect. The doubts expressed, the existence of such a rule, the consideration and the concept of responsibility to protect are not uniform and understood within the various regional organizations⁴⁰ and are

40UN Doc. A/65/877-S/2011/393, “(...) the role of regional and subregional arrangements in implementing the responsibility to protect: report of the Secretary-General”: “The responsibility to protect is a universal principle. Its implementation,

not reflected in practice (Randelzhofer, Dörr, 2012). Mutatis mutandis the value of the practice taken into consideration affirms the existence of the customary norm given that the attitude of the African Union in African crises denotes the propensity of the organization itself not to intervene in its Member States or against the governments in power to exercise the responsibility and the existence of a practice that leads to the general responsibility to protect (Aning, Atuobi, 2009; Omorogbe, 2012).

The reconstruction that interprets the admissibility of a humanitarian intervention according to ex art. 4, letter. h) goes beyond the existing relationships between Art. 51 and Articles 2, par. 3 and 39 of the UN Charter (Pellet, 2014) having the merit of reconnecting the intervention of a decision to the control of a collective body. This helps to remove the dangers of managing an intervention functional to the interests of one or a few states involved (Peyrò Llopis, 2012). And all this because as an exceptional norm art. 51 is *strictissimae interpretationis*, given that the relative ratio allows that the use of force in the absence of action by the SC is admissible in relation to the relevant cases that are provided for by that same rule. The former Art. 4, letter. h) is not reconstructed through Chapter VIII as an exception to

however, should respect institutional and cultural differences from region to region. Each region will operationalize the principle at its own pace and in its own way (...)" (par. 8).

the system that outlines the Charter of the UN and according to art. 51 (Pellet, 2014; De Wet, 2012; Maluwa, 2022).

Recognition of article 17 of the protocol of the Peace and Security Council of African Unity

Art. 17 of the protocol of the Peace and Security Council of the AU does not have an innovative character given that it theoretically recalls the operation of the UN Charter. Already according to the press release of 23 September 2013:

“(...) the Council welcomed the progress of the relations established with the UN Council in the contexts of Chapter VIII of the UN Charter and art. 17 (...). These are ad hoc convergences and not a common strategic vision (...) called for an innovative and flexible application of Chapter VIII (in particular, systematic consultations, the effective involvement of the African States that are parties to the Security Council in the elaboration of the resolutions of the same Council, as well as for the same purpose, the positions of the Peace and Security Council); drew the attention of the other Council to the issue of financing peace support operations, under African command; finally, on the basis of its Protocol and the “Memorandum of Understanding” between the AU and the African regional mechanisms, it recalled that it is the body with primary responsibility in the promotion and maintenance of peace, security and stability in Africa (...)”⁴¹.

41PSC/AHG/3. (CCCXCVII), adopted in New York at the conclusion of the 397th meeting of the Council, at the level of the Heads of State and Government. On the developments of the institutional coordination between the two Organizations, see the aforementioned report of the Secretary-General in UN Doc. S/2011/805, par. 12ss. UN Doc. S/PRST/2014/27, which is affirmed that: “(..) reiterates the importance of establishing a more effective relationship between the Security Council and the African Union Peace and Security Council including through achieving more effective annual consultative meetings, the holding of timely consultations, and collaborative field missions of the two Councils, as appropriate, to formulate cohesive positions and strategies on a case-by-case basis in dealing with conflict situations in Africa (...) have separate and distinct decision-making processes and governance structures, which should be respected (...) is therefore intended to allow for sufficient

These are statements that are effectively finalized and taken into consideration by the SC in the regulatory phase that precedes each operation, recalling the context of Chapter VIII, art. 17 noting the relevant Resolutions of the Council. In particular, the African Council put us in contact with a leader in Africa who called it into the promotion of peace, security and stability without affecting the broad competences that derive from the SC and pursuant to Art. 24 of the UN Charter. Within this context we recall the Joint Communiqué of the African Council, the members of the Security Council of 12 March 2015 and the related “Cadre commun” for a “partenariat renforcé en matière de paix et de sécurité” (Karbo, Virk, 2018)⁴². Already Art. 17 of the protocol

“(…) lends itself to a different construction from the one previously reported: the obligation of the AU Council to cooperate and work closely with the UN Security Council has been affirmed (…)

UA’s activities must comply with (“in keeping with”) the provisions of Chapter VIII of the UN Charter (par. 2) (Dyani-Mhango, 2012). Art. 6, cit., of the Protocol is without prejudice to the obligations deriving from the “provisions” in question.

and reliable information to be provided to both Councils in a predictable and transparent manner to support informed decision-making and to form the basis of my proposals to the Security Council and the General Assembly, with due consideration for the need to respond rapidly owing to the urgency of the situation (…)

UN Doc. S/2017/454, par. 9. PSG/AHG/3. (DXLVII), “Report of the Chairperson of the Commission on Follow-up steps on the Common African Position on the review of United Nations peace operations”, of 26 September 2015, par. 2.

⁴²UN Doc. S/2015/212, par. 2. UN Doc. S/2015/229, “(…) the work of the United Nations Office to the African Union (…)

The request concerns aid in favor of African Unity and not authorization, which in fact the Security Council is not required to give. The Protocol establishing the African Council was drawn up with awareness of the provisions of the UN Charter, which confer on the Security Council primary responsibility for the maintenance of international peace and security, as well as provisions on the role of regional agreements or organizations in maintaining international peace and security and the need to strengthen cooperation and partnership between the UN, other international organizations and the African Union, in promoting and maintaining peace, security and stability in Africa (4th recital) (Karbo, Virk, 2018)⁴³.

The provision in question does not affect the relative primacy of SC. The need for relations with the Council and the relevant bodies in African Unity is indicative (Yusuf, 2012), constituting a precise connection with the African Council and with that of the UN. This is a rule that finances the actions of the first and focuses maximum attention on its contribution to the collective security system of the UN that derive from the activities of the African Council, placing the African Unity on a relative basis for participation in that system. This type of consideration is in line with legal “conduct” with the report of the Panel African

43A/RES/76/288, A/76/PV.89 of 29 June 2022: Financing of the United Nations Multidimensional Integrated Stabilization Mission in Mali.

Unity/UN having as its object the relative methods of supporting peacekeeping on the African continent⁴⁴. Within this context, Resolution 2150 of 4 April 2014, in art. 4 states that:

“(...) in that Resolution the Security Council recognized “the important role played by regional and subregional arrangements in the prevention of, and response to, situations that may lead to genocide, war crimes and crimes against humanity, especially noting Article 4 (h) of the Constitutive Act of the African Union (...)”⁴⁵.

Orientations and inspirations that we have also seen in Resolution 2378, par. 14 and following.

According to Art. 103 of the UN Charter, the norms in question of the African Union are interpreted and applied by the states operating in the African Union and in the Council according to what is provided for in Articles 2, par. 4, 24 and 553 of the Charter. What is pre-established by the African Union that is applied takes into consideration the principle that it contains in the listed provisions of the customary law as an international subject and the attribution of the SC in the main responsibility for maintaining international peace and security. Within this context, with the Resolution n. 2033, the SC indicated to us its relations with the Council when we read that:

“(...) takes note of the respective strategic visions of the partnership between the African Union and the United Nations as contained in the reports of the

⁴⁴UN Doc. A/63/666-S/2008/813, parr. 6, 11, 20 and 35ss. See also the “Report” of 16 June 2015 entitled: “Uniting Our Strengths for Peace-Politics, Partnership and Peace”, par. 232. UN Doc. A/70/357-S/2015/682 (“Implementation of the Recommendations of the High-level Independent Panel on Peace Operations”, parr. 47-51).

⁴⁵S/RES/2150 of 4 April 2014, par. 4.

Secretary-General of the United Nations (...) and the Chairperson of the African Union Commission and stresses that common and coordinated efforts Undertaken by the Security Council and the African Union Peace and Security Council in matters of peace and security, should be based on their respective authorities, competencies and capacities (...)"⁴⁶.

Following with the Resolution 2063 of 31 July 2012 where the SC has affirmed that:

"(...) without prejudice to the Security Council's primary responsibility for the maintenance of international peace and security, the importance of the partnership between the United Nations and the AU, is consistent with Chapter VIII of the United Nations Charter, with regard to the maintenance of peace and security in Africa (...)"⁴⁷.

We have seen other ongoing developments in Resolution 2228 (recital 19) and n. 2457 (par. 11) of 20 June 2015 and of 27 February 2019 relating to the general meeting⁴⁸. Statements that show the primacy of the SC of the UN finding a precise affirmation in Resolution 2056⁴⁹ as well as in Resolutions of 2071 (par. 7) and n. 2085⁵⁰.

46Doc. S/2022/643: Strengthening the partnership between the United Nations and the African Union on issues of peace and security in Africa, including the work of the United Nations Office to the African Union Report of the Secretary-General. See also the SC/15058 of 11 October 2022: <https://press.un.org/en/2022/sc15058.doc.htm>

47S/RES/2063 of 31 July 2012, par. 9.

48S/RES/65/274 of 18 April 2011, par. 2. Resolution 67/302 of 6 September 2013.

49S/RES/2056 of 5 July 2012, par. 18.

50See the Resolution 2071 of 12 October 2012 which is affirmed that: "(...) taking note of the ECOWAS letter (...) requesting a Security Council Resolution authorizing the deployment of a stabilization force in Mali under a Chapter VII mandate (...) and further taking note of the ECOWAS letter (...) to the African Union to engage with the African Union on fine-tuning the concept, modalities, and means of the deployment of a stabilization force in Mali (...); "Acting under Chapter VII (...) 7. Requests the Secretary-General to immediately provide military and security planners to assist ECOWAS and the African Union, in close consultation with Mali (...) in the joint planning efforts to respond to the request of the Transitional authorities of Mali for such an international military force (...)". UN Doc. S/2011/805, par. 4.

The Council's actions in the African Unity

Returning to Art. 53 of the UN Charter as a rule that places the authorization of the SC in an intervention in states that are not members of the organization de qua (Pellet, 2014). Art. 53 also distinguishes and constructs a statement between actions that carry out their work outside or around the Member States of regional organisations. The acquisition of skills by regional organizations creates the effect of allowing them to replace the SC by adding to the exception of Art. 51 of the UN Charter as a type of exception that was not foreseen. It is actually a construction of a de facto nature and not useless according to Art. 53 and to the function of Chapter VII and VIII of the UN Charter (Walter, 2011; Pellet, 2014; Boisson De Chazournes, 2017; Liakopoulos, 2020c).

Each intervention in question presumes a consensus which is indicated in advance and regardless of the examination of the problem of compatibility with the principle of state political independence according to Art. 2, par. 4 of the Charter to an intervention that is based on consensus that profoundly changes the relative form of the political and inspiring principles in an ineffective manner (Reismann, 1980).

The basis of an intervention with a coercive character without a clear and pre-established consensus appears consistent with the practice that results with peacekeeping forces operating in a traditional way with ad hoc consensus in the interested state and interested parties. A consensus that accompanies the authorization of the SC as operations that pursue the classic and always inspiring objectives of the UN, namely the maintenance of peace and international security where the organizations themselves carry out their work⁵¹.

The African Council is moving towards an authorization from the SC for this type of operation, perfectly respecting the organizational and construction values of the principles of the UN Charter (De Wet, 2012; Pellet, 2014)⁵². The African Council did not invoke Art. 4 under consideration as a basis for its operations within the Member States of the African Union (Allain, 2004; Sturman, Hayatou, 2010; Adjovi, 2012; Williams, Boutellis, 2014)⁵³. This Council hoped for the need for a broad

⁵¹See the Resolution 2447 of 13 December 2018 (recital n. 6): “(...) reaffirming the basic principles of peacekeeping, such as consent of the parties, impartiality, and non- use of force, except in self-defence and defence of the mandate, and recognizing that the mandate of each peacekeeping operation is specific to the needs of the situation concerned and underlining that the mandates that it authorizes are consistent with the basic principles, and reiterating that the Security Council expects full delivery of the mandates it authorizes (...)”.

⁵²UN Doc. S/2001/353.

⁵³PSC/PR/COMM.(CCCVI), that the African Council affirms that: “(...) urges the UN Security Council to expeditiously consider and authorize the support required for the immediate implementation of the Strategic Concept, in order to take advantage of the unique opportunity created by the operations being conducted against Al Shabaab in different parts of Somalia, thereby consolidating the security gains and moving the

consideration of its positions by the SC without withdrawing from the collective security system and as conceived by the UN Charter. The authorization for the movement of the operation MISCA, the African Council asked the SC to exercise the support of the African operation as well as the related political-institutional functions that derive from the UN Charter. The SC has authorized an operation under African command and does not exclude the exercise of the powers of the Council itself but not in a precise and clear way.

peace process forward (...)”. See also the decision of 15 September 2015: PSC//PR/COMM.(DLXV): “(...) its determination to fully assume its responsibilities, having in mind the relevant provisions of the Protocol (...), in particular those relating to early response to contain crisis situations so as to prevent them from developing into full-blown conflict (article 4-b), respect for the rule of law, fundamental human rights and freedoms, the sanctity of human life and international humanitarian law (article 4-c) (...) to authorize the deployment of an African Prevention and Protection Mission in Burundi (MAPROBU), for an initial period of six months renewable (...) to support the deployment of MAPROBU”; and “in the event of non-acceptance of the deployment of MAPROBU, to recommend to the Assembly (...) the implementation of article 4 (h) of the Constitutive Act relating to intervention in a Member State in certain serious circumstances (...) to adopt, under Chapter VII of the UN Charter, a Resolution in support of the present communique (...)”. UN Doc. S/PV.7886: l’Uruguay: “(...) underscores that nothing in Resolution 2337 (2017) can be interpreted as express authorization of the use of force (...) recognized the election results of 1 December 2016, and from the very outset of the crisis has advocated a search through exclusively peaceful means to resolve it and to safeguard the security of its citizens and respect for their fundamental rights and freedoms in accordance with universally recognized democratic norms (...) (...) Bolivia (...) believes that the adoption of the Resolution cannot and should not be interpreted to represent Security Council support for or endorsement of the use of force. To that end, we would need a specific Resolution providing such a mandate or endorsing such action (...) joined the unanimous consensus on the Resolution after the introduction of important improvements into the text (...) in the light of the last amendment to the draft, which underlined the importance of a political settlement of the impasse in the Gambia, we [the Egyptian delegation] are convinced that today’s Resolution does not endorse any mandatory automatic enforcement, as such processes require the Security Council’s clear and unquestioned authorization, in accordance with Chapter VIII of the Charter of the United Nations (...)”.

The financial report of the Union and sub-regional organizations
 An exceptional and possible collaboration is appropriate for an
 action without prior authorization from the Council which
 usually occurs after the fact. Already a document of the African
 Unity declared that:

“(...) in certain situations, such approval could be granted “after the fact” in circumstances requiring urgent action. In such cases, the UN should assume responsibility for financing such operations (...)”⁵⁴.

A document which makes it obvious *sic et simpliciter*:

“(...) the admissibility on the basis of the Charter of an authorization “subsequent” to the action initiated, here it should be noted that the preceding step is not reflected in practice; and that this indicates the need for operational assistance from the UN (and other entities) in favor of the missions launched by the regional organization (...)” (Gray, 2018)⁵⁵.

The content in Resolution 2033 spoke to us about:

“(...) “authorities, competencies and capacities” of the UN and regional organizations leads us to focus attention on the systems and operating mechanisms of the latter; these are aspects that can impact the relationships that are created with the UN (...)” (Magliveras, Naldi, 2018)⁵⁶.

The African Unity also on this occasion put peacekeeping at the forefront and the related characteristics of a relationship of dependence of the regional organization on its own resources which are provided by the UN by regional organizations as

⁵⁴The Common African Position on the Proposed Reform of the United Nations, p. 6, adopted within the framework of the AU in Addis Ababa, on 8 March 2005 during the seventh extraordinary session.

⁵⁵See the Resolutions: 2031 of 21 December 2011, and 2217 of 28 April 2015. UN Doc. S/2012/923. Declaration of the UN Doc. S/PRST/2015/12, of 11 June 2015 and the UN Doc. S/2017/45.

⁵⁶UN Doc. S/2017/454, par. 9.

happens in the case of the EU and NATO and from various other states (Gray, 2018)⁵⁷. This type of subordination also shows not only an economic but also a strategic, practical character which contrasts with the operational autonomy of the African Union. In this spirit, we recall the case of the mission AFISMA, an operation of the UN in which the complete relocation of the African mission was decided (De Coning, Aoi, Karlsrud, 2017)⁵⁸.

The interpretation of the African Union builds practical feedback in a sector that operates instead of operating. Within this context, we recall the Resolution 1908 on peace and security in Africa which connects with the report of the panel African Union and UN as a relative support for African peacekeeping (Moelle, 2017; De Coning, 2019)⁵⁹. The forms of partnership establish a long-term program of approximately 10 years with the final objective of financing the peace activities of the African Union

57UN Doc. S/2017/454, affirms that. "(...) all African Union missions have relied to some extent on external partners for support. The joint review made clear that the African Union must continue to build its capacity to plan, finance, sustain and oversee its own missions so that it can implement its mandates, meet the expectations of its membership and partners, and enhance the partnership with the United Nations. Furthermore, the joint review recognized the need for African Union peace support operations to have predictable and sustainable financing and support (...)".

58UN Doc. S/2013/163 annexing the request of the AU Council for the transformation of AFISMA (see also PSC/PR/2 (CCCLVIII) and, for the position of ECOWAS, UN Doc. S/PV.6994) into a robust operation of the UN, created with Resolution 2100 of 25 April 2013 (certainly, unlike what happened in the past (also in the experiences of ECOWAS and SADC, with a financial and structural dependence on the Western powers), in the case of the Mission in Mali.

59UN Doc A/63/666-S/2008/813, par. 35 ss.

(Makinda, Wafula Okumu, Mickler, 2015; Moelle, 2017; Magliveras, Naldi, 2018)⁶⁰, as well as the creation of a support team that is relevant to the activities of the peace of the African Union within the department of peacekeeping operations. The Africa Contingency Operations Training & Assistance (ACOTA) as well as the French-inspired program Renforcement des Capacités Africaines de maintien de la Paix (ReCAMP) (Boisson de Chazournes, 2010; Yamashita, 2012) are important points of reference and always well recalled not only to the relevant Resolutions but also in practice through the development of peacebuilding activities⁶¹ where we read that:

“(...) resolutions establishing the Peace Consolidation Commission, the regional organizations⁶² are “associated” (...) also due to the contributory defaults of its States Members, with the experience of the African Union Mission in Sudan-AMIS (Nerland, 2011)⁶³ (...). The creation of the African Union-United Nations Hybrid Operation in Darfur-UNAMID, is a mission, precisely, not totally African and dependent on a financing system external to African Union. We understand the AU's alleged need for “predictable, flexible and sustainable financing for its peace operations”, with the proposed

60UN Doc. A 61/630.

61See also in argument: A/RES/76/305; A/76/pv.102 of 8 September 2022.

62See the Resolution of the General Assembly n. 60/180 and the Resolution of council 1647 (par. 7 b) of 20 December 2005.

63See the Resolutions of the General Assembly n. 65/274 of 28 July 2011, par. 2, and 69/277 of 27 May 2015 (“Political declaration on Strengthening cooperation between the United Nations and regional and Subregional Organizations”), par. 7, the Assembly declares that: “(...) recognizes that, in cases when regional or subregional organizations deploy peacekeeping operations authorized by the Security Council, they contribute towards the maintenance of international peace and security, consistent with the provisions of Chapter VIII of the Charter, and stress the need to Enhance the predictability, sustainability and flexibility of financing regional Organizations When they undertake peacekeeping under a Council sent”. See also the Resolution n. 2320 of the Security Council of 18 November 2016, par. 7.

“modalities” for the provision of contributions from the UN (...)”⁶⁴.

The construction work of a Resolution of the SC project aims to create an initiative in some African states as a sort of model that establishes the financing of operations that are authorized by the Council itself. This type of development shows the granting of financing which exclusively concerns the operations authorized by the SC of the UN and which subordinates the relevant conditions where the creation and functioning of the regional missions indicate the relevant reference parameter such as the system of the peacekeeping of the UN. The same types of development also show the relative functioning of the positions of the SC which involve control by means of an institutional system with the effective use of funds of the UN by organizations of which the members themselves are part (Gray, 2018; Magliveras, Naldi, 2018)⁶⁵.

64A/RES/76/305; A/76/pv.102 of 8 September 2022.

65UN Doc. S/2017/454; UN Doc. S/2018/678, par. 45, which is affirmed that. “(...) the models included voluntary contributions to a trust fund, joint financing and budgeting, the support office model, joint financing of a hybrid mission, and a direct subvention to the African Union. Comprehensive support for the financing mechanisms requires a coordinated approach between United Nations organs. While the Security Council endorses a mandate that includes a possible support package, the reporting framework for financing remains within the purview of the General Assembly”) affirmed the Resolutions n. 2320 that affirms: “(...) the need to enhance the predictability, sustainability and flexibility of financing for African Union-led peace support operations authorized by the Security Council (...)” and n. 2378, recital n. 17, which is declared that: “(...) recalling further its encouragement”. for the African Union to finalize its human rights and Conduct and Discipline Compliance frameworks for African Union peace support operations, to achieve greater accountability, transparency, and compliance with international human rights law and international humanitarian law, as applicable, and with United Nations conduct and discipline standards, and underscoring the importance of these commitments as well as the requirement for oversight by the Security Council of operations authorized by

There is a relative gap between ambitions of an autonomous nature and the norms of the Establishing Act of the African Union of the African regional and sub-regional organizations as well as their effectiveness showing a certain capacity of an operational nature. It cannot be excluded that this type of rules focuses on exceptional attention to the African situation and the relevant operational contexts (Boisson De Chazournes, 2017). Within this context of a static nature, the actions of the SC, as well as the work of the Special Committee on peacekeeping operations, have examined the theme of:

“Cooperation with regional arrangements”, giving autonomous importance to the “Enhancement of African peacekeeping capacities”⁶⁶.

Statements that we have also noted in the resolutions of the SC.

The role recognized by the Council of African Unity and its relations with the SC

The African Union has taken as the basis of a relationship the partnership with the UN in which the relative primacy of the peace and security council of the African Union is noted as an

the Security Council and under the Security Council’s authority consistent with Chapter VIII of the Charter (...); and par. 17 of the same Resolution affirm that: “(...) reiterates that regional organizations have the responsibility to secure human, financial, logistical and other resources for their organizations and recognizes that ad hoc and unpredictable financing arrangements for African Union led peace support operations authorized by the Security Council and consistent with Chapter VIII of the Charter may impact the effectiveness of these peace support operations”).

⁶⁶UN Doc. A/68/19; UN Doc. A/66/19; UN Doc. A/65/19; UN Doc. A/64/19.

organization that projects internally respect for the bodies of other regional organizations and obviously African sub-regional ones with the related competences in maintaining international peace and security.

Already Art. 16, par. 1, of the Protocol of the Council of African Unity states that:

“(...) the Regional Mechanisms are part of the overall security architecture of the Union, which has the primary responsibility for promoting peace, security and stability in Africa. In this respect, the Peace and Security Council and the Chairperson of the Commission, shall: a) harmonize and coordinate the activities of Regional Mechanisms in the field of peace, security and stability to ensure that these activities are consistent with the objectives and principles of the Union; b) work closely with Regional Mechanisms, to ensure effective partnership between them and the Peace and Security Council in the promotion and maintenance of peace, security and stability. The modalities of such partnership shall be determined by the comparative advantage of each and the prevailing circumstances (...). It outlines a framework in which the functions recognized to the African Council aimed at avoiding the dangers of partial management of the maintenance of peace and security in Africa by part of the mentioned sub-regional systems (...)” (Tehindrazanarivelo, 2012). We are pleased to recall within this framework the memorandum of Understanding of 2008 relating to cooperation in the sector in question between the African Union, the regional economic communities and the regional mechanisms of the standby brigades on the African continent. The memorandum:

“(...) ensuring, among other things, that the activities of the sub-regional entities are congruent with the objectives and principles of the Union (art. III, par. 2) (...). They must be implemented by observing the principles and provisions of the Act establishing African Union and the Protocol on the African Council, consistently with the “primary responsibility” of the Union for the maintenance and promotion of peace, security and stability in Africa (art. IV, i- ii, of the “Memorandum”, with reference to art. 16 of the Protocol) (...)” (Tehindrazanarivelo, 2012).

As we understand, the relationships between the UN and the African Union are coordinated through efforts that ensure and pursue African interests at the continental level where the commission of the African Union has the task of informing the SC of activities relevant to the promotion, maintenance of peace, security and stability on the African continent as we have also noted in Art. XXI of the memorandum just cited in the previous paragraphs.

The African Council can function according to the APSA (African Peace and Security Architecture) road, i.e. it tries to avoid:

“(...) multiple bodies operating with regard to the same context (...). The operational-military centrality of some of the organizations is undoubted African countries indicated above, in the geopolitical areas of respective competence, in the sense indicated, it is noteworthy, from the point of view of that Council, that it has authorized ECOWAS, in collaboration, as appropriate with the core countries; (...) to put in place the required military and security arrangements towards the objectives listed in the strategic concept for the Resolution of the crises in Mali (...)”⁶⁷.

Also in this case we note the relative authorization of the Security Council requests the military transfer of the RCA mission from the other Council. The relevant authorization is placed and organized through the ex Chapter VII of the UN Charter as a mission that apparently creates in an indicative way the will of the same Council to make use of the relevant

⁶⁷Doc. PSC/PR/3 (CCCXXXIX), par. 1 of 24 October 2012, in site: <http://www.peaceau.org/uploads/auc-psc-report-mali-22-10-2012-2-final.pdf>.

provisions of the regulatory system and with reference to a situation that it has deemed to take the initiative to operate (Pellet, 2014). The authorization of the SC was only preceded by a training and planning process of the secretary general and is confirmed in the preparatory articles of the Resolution 2127 (Yusuf, 2012)⁶⁸.

Yet another collaborative example is the enforcement actions we have noted in the terrorist activities of Boko Haram after the initiative of the Lake Chad Basin Commission (LCBC) for the Multinational Joint Task Force-MNJTFS⁶⁹, mechanism, where the African Council Unity decided:

“(...) to authorize its deployment for an initial period of twelve months and with the mandate indicated, asked the Security Council to urgently adopt a Resolution which, in line with the request made by the Member States of the LCBC and Benin (...): (i) approve the deployment of the MNJTFS, (...) and (iii) request international support for the MNJTFS, with related activities, against Boko Haram and other groups terrorists (...) asked “the President of

68PSC/PR/2(CCCLXXX); The report of UN Doc. S/2013/677; see also: UN Doc. S/PV. 7072, which is declared that: “(...) we were able, without prejudice to the responsibilities of the Security Council, to share our views with Council members (...) we must build on that progress and on the consultations that have preceded other Resolutions of the Council (...), in order to work better together (...)”. UN Doc. S/2018/678 (“Strengthening the partnership between the United Nations and the African Union on issues of peace and security in Africa, including on the work of the United Nations Office to the African Union”), parr. 5 (“(...) the collective action of the United Nations and the African Union on peace and security in Africa will continue to be most effective if the United Nations is closely aligned to or supports the decisions and engagements of the African Union and subregional organizations. The effectiveness of such joint action was clearly illustrated in the close collaboration between the United Nations, the African Union and the Economic Community of West African States (ECOWAS) in the Gambia and in Guinea-Bissau”).

69See the paragraphs 6-8 of the “Final Communiqué of the Extraordinary Summit of Heads of State and Government of LCBC Member Countries and Benin” of 7 October 2014 (www.cbilt.org/sites; <http://www.peaceau.org>)

the Commission to forward this communication to the UN Security Council and other AU partners, for their support and appropriate action”⁷⁰ (...) supported the proposal aimed at obtaining from the Security Council the adoption of a Resolution authorizing the Member States of the Lake Chad Basin Commission and Benin to deploy the Multinational Force⁷¹ (...) on 3 March 2015 (having recalled their powers, in collaboration with the President of the Commission, to authorize the creation and deployment of peace support missions and establish general guidelines for the conduct of such missions, including the related mandates (...) the provisions contained in Art. 16 of its Protocol (...) supported the Force Concept previously developed), the African Council “Urges the UN Security Council, following the endorsement of the MNJTF Strategic CONOPS (...) to urgently adopt, under Chapter VII of the UN Charter, a Resolution for the purposes indicated (...)”⁷².

70PSC/AHG/COMM.2(CDLXXXIV), parr. 8 and 13.

71 Doc. Assembly/AU/19(XXIV) Add. 7, par. 17.

72See the meeting of 3 March 2015 (“(i) (...) endorse the deployment of the MNJTF; (ii) enable the provision of sustainable, flexible and predictable support to the MNJTF, including through innovative support mechanisms, drawing lessons from previous and present experiences regarding AU-led operations, bearing in mind that support by the UN to the AU in matters relating to the maintenance of international peace and security is an integral part of collective security as provided for in the United Nations Charter; and (iii) call for the provision of additional bilateral and multilateral voluntary support to the MNJTF and other related efforts (...)). UN Doc. S/PRST/2015/12; UN. Doc. S/PRST/2015/14; UN. Doc. S/PRST/2017/14; the Resolution n. 2349 of 31 March 2017 which is affirmed that: “2. Recalls the Communication of the AUPSC on Boko Haram, including from the 484th meeting, recognises the continued support of the AU to the MNJTF, and calls for the Member States of the Lake Chad Basin Commission (LCBC) and Benin to continue their efforts in the fight against Boko Haram and implementation of the Communication; further acknowledging the need for an effective and strategic relationship between the AUPSC and the Security Council, to enable both institutions to support stability and development in the Lake Chad Basin; (...) 4. Welcomes the multilateral and bilateral support provided to the military efforts in the Region and encourages greater support to strengthen the operational capability of the MNJTF to further the Region’s efforts to combat Boko Haram and ISIL (...) 33. Encourages the Secretary-General, with a view to enhancing collaboration and responsibility among relevant entities and mobilising resources for the region, to make a high level visit to the Region, and invites him to consider undertaking a joint visit with the World Bank, Chairperson of the AU Commission, the President of the World Bank Group, and the President of the African Development Bank, to strengthen the focus on and commitment to the Region of the international community (...)). UN Doc. S/2018/55: “(...) the Peace and Security Council and the members of the Security Council encouraged the Governments of the Lake Chad Basin, MNJTF, regional organizations, and the broader international community to redouble their efforts on all fronts, in order to

Within this context, we recall the relationship with the IGAD, for the functioning of the Regional Protection Force-RPF for South Sudan which in reality recalled Art. 16 and the “Memorandum” where the Council claimed that:

“(...) full support to the decision by IGAD to request the United Nations Security Council (UNSC) to review both, the composition and the mandate of the RPF for South Sudan created pursuant to UNSC Resolution 2373 (...)”⁷³.

With two words we recall in a necessary and understandable way what was revealed by the Council of the African Union to define the means for a new agreement, i.e. for the future relations between the Union and the African regional economic communities which up to now we have seen and analyzed in the previous paragraphs⁷⁴.

ensure not only the defeat of Boko Haram, but also to ensure that the root causes of the crisis are holistically addressed. In this context, they encouraged the Economic Community of West African States (ECOWAS) and the Economic Community of Central African States (ECCAS), together with the Lake Chad Basin Commission, to develop a comprehensive and common state that effectively addresses the drivers that contributed to the emergence of Boko Haram and ISIL, with a particular focus on longer term development needs (...)”. ECCAS (PSC/COMM.(DCCXCV) of 20 September 2018.

⁷³PSC/PR/COMM.(DCCCXX) of 20 December 2018.

⁷⁴ISS, Peace & Security Council Report, n. 115 of July 2019, p. 3.

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